

February 14, 2000

D.T.E. 99-15

Petition of Commonwealth Electric Company and Cambridge Electric Light Company
for approval of an Amended and Restated Power Sale Agreement with Southern Energy
Canal, L.L.C.

APPEARANCES: John Cope-Flanagan, Esq.

NSTAR Services Company

800 Boylston Street

Boston, Massachusetts 02199

FOR: COMMONWEALTH ELECTRIC COMPANY

and

CAMBRIDGE ELECTRIC LIGHT COMPANY

Petitioners

Andrew J. Newman, Esq.

Frank P. Pozniak, Esq.

Rubin and Rudman, LLP

50 Rowes Wharf

Boston, Massachusetts 02114

FOR: SOUTHERN ENERGY CANAL, LLC

Intervenor

I. INTRODUCTION

On August 27, 1999, Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge") (together, the "Companies"), pursuant to G.L. c. 164, § 94A, filed a petition ("Petition") with the Department of Telecommunications and Energy ("Department") for approval of an Amended and Restated Power Sale Agreement ("Amended Agreement") and a Reinstatement Agreement ("Reinstatement Agreement") between Southern Energy Canal, L.L.C. ("Southern") and the Companies.

On October 20, 1999, the Department held a public hearing to afford interested parties the opportunity to comment. At that time, the Department granted Southern's petition to intervene as a limited participant. No other petitions to intervene were submitted.

II. AMENDED AGREEMENT

A. Description

The Companies entered into a power purchase agreement ("PPA") with Canal Electric Company ("CEC") on December 1, 1965 to purchase 25 percent of the capacity⁽¹⁾ and energy from Canal Unit 1 (the "Original Contract") (Exh. DTE-1, at 1).⁽²⁾ CEC assigned the Original Contract to Southern effective December 30, 1998, the closing date for the sale of Canal

Unit 1 to Southern (id.; Petition at 2).⁽³⁾

The Reinstatement Agreement makes the pricing provisions of the Amended Agreement effective January 1, 1999 (Reinstatement Agreement at 1-2).⁽⁴⁾ The Amended Agreement expires on October 10, 2002 (Amended Agreement at 13).

The Companies state that the Original Contract is a cost-of-service agreement which, among other things, allows for appropriate capital expenditures to be made in conformance with "good utility practice" (Exhs. DTE 1-1, Att. A at 13; DTE 1-4). Pursuant to the Original Contract, the Companies paid CEC a demand rate, consisting of a 25 percent share of capital costs, taxes, and operating expenses except fuel (Exh. DTE 1-1, Att. A at 3-5). The Canal Unit 1 capital costs were based on net plant investment, that is construction cost less depreciation plus the cost of necessary additions, adjusted

for taxes, changes in fuel stocks, and retirements (id. at 5-6). Pursuant to the Original Contract, the Companies also paid CEC an energy rate proportionate to the Companies' share of the total fuel expense (id. at 7-8). The Original Contract expires on October 10, 2002 (id. at 10).

The Companies state that the Amended Agreement differs in several ways from the Original Contract due to the evolution of the utility industry and the power generation/marketing business, and due to the change in ownership of Canal Unit 1

(Exh. DTE 1-1, at 1). The demand rate in the Amended Agreement has two parts: (1) a fixed base amount, ranging from \$691,042 to \$758,121 per month for 1999 through September 2002; plus (2) a fixed selective catalytic reduction ("SCR") charge,⁽⁵⁾ ranging from \$72,500 to \$89,767 per month for January 2000 through September 2002 (Amended Agreement at 8-9).⁽⁶⁾ The energy rate is unchanged; however, it is now explicit that the Companies shall pay for their proportionate share of nitrogen oxide ("NOx") emission allowances required to operate the unit, through an emissions charge (id. at 9-10). The Amended Agreement provides for a contract purchaser's committee to: (1) provide input to decision-making processes for Canal 1; (2) specify certain aspects of fuel procurement and handling policy; and (3) provide guidelines for scheduling and bidding the capacity and output of Canal 1 (including decisions about emissions allowances) into the market (id. at 6-8, 10-12).

2. The Companies' Position

The Companies state that the power purchased under the Amended Agreement will be used to supply a portion of their load requirements for standard offer service and default service, but may or may not be used for that purpose following the Companies' auction of power purchase contracts and competitive solicitation for standard offer supply (Petition at 1; Exhs. DTE 1-1; DTE 1-26). The Companies estimate that the Amended Agreement will save their customers \$3.79 million, on a net-present-value basis, over the remaining term of the contract (Petition at 2; Exh. DTE 1-8). The Companies state that this projected savings consists of \$0.94 million in reduced base demand charges and \$2.85 million in reduced SCR charges that would have been required pursuant to the Original Contract (Exh. DTE 1-8). The Companies state that while some type of NOx reduction is required, the installation of SCR is not required for compliance of the Department of Environmental Protection Air Quality Regulations (Exh. DTE 1-15). The Companies state that Southern has determined that it is more economic to comply with regulatory requirements by installing SCR than by purchasing NOx allowances necessary to supplement NOx allowances allocated to Canal Unit 1 (id.). The Companies state that Southern expects installation of SCR to reduce NOx emissions during the ozone season by 1,666 tons per year (Exh. DTE 1-16). The Amended Contract provides that the Companies would benefit if, during the term of the contract, there are excess allowances and those allowances are liquidated (Amended Agreement at 10-11; Exh. DTE 1-5). The Companies did not provide an estimate of the economic value of the allowances, emission reduction credits, or offsets created by the installation of SCR (Exh. DTE 1-24).

The Companies state that the original Contract and the Amended Agreement both have prices below current and forecast market prices (Exh. DTE 1-9). In particular, the Companies state that over the years 1999-2002, the price in the Original Contract ranges from \$0.93 to \$5.44 per megawatt-hour ("MWH") less than the market price forecast,⁽⁷⁾ while the price in the Amended Agreement ranges from \$2.28 to \$5.83 per MWH less than the same market price forecast (*id.*). Therefore, the Companies argue that they are not required to re-negotiate the Original Contract pursuant to G.L. c. 164, § 1G(d)(2)(i).⁽⁸⁾ The Companies state that the Amended Agreement holds their customers harmless from paying rates any higher than what they would have been if the divestiture of Canal Unit 1 had not taken place (Petition at 2).

C. Standard of Review

No gas or electric company shall hereafter enter into a contract for the purchase of gas or electricity covering a period in excess of one year without the approval of the Department ... G.L. c. 164, § 94A. In determining whether to approve an amendment to a purchase power agreement, the Department must address its reasonableness. In assessing the reasonableness of the amendment to a purchased power agreement, the Department must review all available information to ensure that the agreement is consistent with the public interest. Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993); Boston Edison Company, D.P.U. 92-183 (1992) (Department approval of a termination agreement of a purchase power contract with Down Easter Peat, L.P.).

D. Analysis and Findings

The Companies claim that the Amended Agreement will save their ratepayers about \$3.79 million from: (1) \$0.94 million in reduced demand charges and (2) \$2.85 million in reduced SCR charges. While adding the SCR to Canal 1 is economically beneficial, the Companies state that SCR is not necessary for compliance, and have not made it clear that this compliance path is the most economically beneficial to the Companies. The Department notes that there could be significant economic value to excess allowances generated by the installation of SCR that could offset the cost of this compliance path. The economic value over the life of the SCR associated with the Companies' share of SCR costs should flow to them and their ratepayers. This economic value should be used to mitigate the Companies' stranded costs. The Department anticipates that the Companies will use their best efforts through their participation in the contract purchasers committee to ensure that the Companies, and thus their ratepayers, derive the full economic benefit associated with their payments toward the installation of SCR (including the economic benefit of all NOx allowances, emission reduction credits, and emissions offsets due to the installation of SCR).

Upon review of the record, we find that the Amended Agreement is reasonable and in the public interest because the Amended Agreement: (1) holds the Companies' customers harmless from paying rates any higher than what they would have been if the divestiture of Canal Unit 1 had not taken place; (2) will result in reduced costs for the Companies' ratepayers; and (3) provides the Companies with an opportunity to derive economic

benefit from installation of SCR. Accordingly, the Department hereby approves the Amended Agreement and the associated Reinstatement Agreement.

IV. ORDER

Accordingly, after due consideration, it is hereby

ORDERED: That the Petition for approval of a Amended Agreement and Reinstatement Agreement between Cambridge Electric Light Company and Commonwealth Electric Company and Southern Energy Canal, L.L.C. is approved.

By Order of the Department,

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Canal Unit 1 has an electrical capacity of approximately 560 megawatts

(Exh. DTE 1-1, Att. A at 2).

2. The Department, on its own motion, moves the following documents into the record of this proceeding: (1) The petition dated August 27, 1999; (2) the Amended and Restated Power Sales Contract between Southern and the Companies; (3) the Reinstatement Agreement between Southern and the Companies; and (4) the Companies' responses to the Department's information requests DTE-1-1 through 1-26 inclusive.

3. The Department approved an asset sale agreement between CEC and Southern, that transferred Canal Unit 1 to Southern. Cambridge Electric Light Company, et al.,

D.T.E. 98-78/83 (1998).

4. The Amended Agreement had originally been rejected by the Federal Energy Regulatory Commission, on the grounds that it required consent of the other purchasers of electricity from Canal Unit 1 (Petition at 2). Since that rejection, the consent of the other purchasers was obtained, and FERC accepted the Amended Agreement for filing (Petition at 2; Exh. DTE 1-2 (supplement)). The Reinstatement Agreement recognizes this consent and reinstates the Amended Agreement.

5. SCR is a method to reduce emissions of nitrogen oxides, a pollutant.

6. Base and SCR demand charges for part of a month apply for October 2002 (Amended Agreement at 9).

7. This price forecast is also filed in Commonwealth Electric Company, D.T.E. 99-62 (see Exh. DTE-1-9).

8. G.L. c. 164, § 1G(d)(2)(i) states, in pertinent part

in order to mitigate any costs in excess of the projected market value of power associated with purchased power contracts approved by the Department ... electric companies and the sellers under such contracts shall make good faith efforts to renegotiate those contracts which contain a price for electricity which is above-market as of March 1, 1998, in order to achieve reductions in the transition charges ... attributable to any such contract.